Supreme Court, U.S.
FILED
AUG 16 2000
CLERK

(2)

No. 00-109

In The

# Supreme Court of the United States

BETH LEONARD, On Behalf of Herself and all Others Similarly Situated,

*Petitioner,*

vs.

NORTHWEST AIRLINES, INC.,

*Respondent.*

**On Petition For A Writ Of Certiorari To The State Of Minnesota Supreme Court**

## BRIEF IN OPPOSITION

THOMAS TINKHAM
*Counsel of Record*
MICHAEL J. WAHOSKE
ANDRE T.M. HANSON
DORSEY & WHITNEY LLP
Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

*Attorneys for Respondent*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

17pp

## QUESTION PRESENTED

*American Airlines, Inc. v. Wolens*, 513 U.S. 219, 232-33 (1995), ruled that the Airline Deregulation Act's (ADA) preemption clause permits "routine breach-of-contract claims" that enforce agreed-upon terms but "stops States from imposing their own substantive standards with respect to rates, routes, or services," and therefore "confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." The Petitioner's suit in this case seeks to use Minnesota state law to change a bargained-for price term in a fully-performed contract of air carriage. Accordingly, the question presented is:

Where the Minnesota Court of Appeals interpreted the state law which Petitioner sought to use as requiring it to consider state policy which was "outside" the parties' bargain as to price, was it correct to follow *Wolens* and hold that Petitioner's suit was preempted by the ADA?

## CORPORATE DISCLOSURE STATEMENT

Respondent Northwest Airlines, Inc., is an indirect, wholly-owned subsidiary of Northwest Airlines Corporation, a publicly traded company. As of December 31, 1999, based on a Schedule 13G filed with the Securities and Exchange Commission, AXA Financial, Inc. (formerly known as the Equitable Companies Incorporated), through subsidiaries and affiliates, had beneficial ownership of more than 10% of Northwest Airlines Corporation's common stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

CORPORATE DISCLOSURE STATEMENT ..... ii

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE CASE ..... 2

A. Factual Background ..... 2

B. Procedural Background ..... 3

REASONS FOR DENYING THE PETITION ..... 5

I. THE MINNESOTA COURT OF APPEALS CORRECTLY FOLLOWED THIS COURT'S DECISION IN *WOLENS* ..... 5

II. THERE IS NO CONFLICT OR CONFUSION HERE; EVERY LOWER COURT CONSIDERING THE IDENTICAL ISSUE HAS CONSISTENTLY APPLIED *WOLENS* TO PREEMPT SUCH CLAIMS ..... 10

CONCLUSION ..... 12

# TABLE OF AUTHORITIES

Page

## CASES

*American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995) ..... *passim*

*Blackner v. Continental Airlines, Inc.*, 709 A.2d 258 (N.J.Super.A.D. 1998), *cert. denied*, 525 U.S. 1142 (1999) ..... 11

*Boon Ins. Agency, Inc. v. American Airlines, Inc.*, 17 S.W.3d 52 (Tex. Ct. App. 2000) ..... 10

*Dean Van Horn Consulting Assoc., Inc. v. Wold*, 395 N.W.2d 405 (Minn. Ct. App. 1986) ..... 8

*Howell v. Alaska Airlines, Inc.*, 994 P.2d 901 (Wash. Ct. App. 2000) ..... 10

*Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) ..... 5, 6, 7

*Pacheco v. Scoblionko*, 532 A.2d 1036 (Me. 1987) ..... 8

*Ridgley v. Topa Thrift & Loan Ass'n*, 953 P.2d 484 (Cal. 1998) ..... 8

## STATUTES AND RULES

49 U.S.C. § 41713(b)(1) ..... 6

49 U.S.C. App. § 1506 ..... 7

14 C.F.R. § 253.7 ..... 3

Minn. R. Civ. App. P. 117 ..... 1

## OTHER AUTHORITIES

H.R.Rep.No. 180, 103d Cong., 2d Sess. 1 (1993), *reprinted in* 1994 U.S.C.C.A.N. 818 ..... 6

## BRIEF IN OPPOSITION

Respondent Northwest Airlines, Inc. ("Northwest"), respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Minnesota Court of Appeals' decision in *Beth Leonard, et al. v. Northwest Airlines, Inc.*, 605 N.W.2d 425 (Minn. Ct. App. 2000), *review denied*, Apr. 18, 2000.[1] In *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), this Court explicitly addressed the only issue presented in this case, and made clear that under the ADA's preemption clause, state law may not be used to regulate price terms contained in an air carrier's air travel contract. The Minnesota Court of Appeals correctly adhered to this Court's decision in *Wolens*, and there are no decisions in conflict with that intermediate state appellate court ruling; every court to consider this issue has held that identical claims are preempted. Because this Court's precedent is clear, recent, and not causing confusion on this point, this petition should be denied.

---

[1] The petition states on its cover that it seeks a writ of certiorari "to the State of Minnesota Supreme Court." That court, however, did no more than exercise its discretion summarily to deny a petition for review. *See* Pet. App. at 1; Minn. R. Civ. App. P. 117, subd. 2 ("[r]eview of any decision of the Court of Appeals is discretionary with the Supreme Court").

## STATEMENT OF THE CASE

### A. Factual Background

Northwest, headquartered in the Twin Cities in Minnesota, is an airline providing national and international air transportation to millions of customers. Petitioner is an individual living in Minnesota who purchased a ticket from Northwest for cross-country air travel during the period October 24, 1998 to October 28, 1998. The terms and conditions of Petitioner's travel with Northwest were set forth in a Contract of Carriage between the parties. Although Petitioner could have chosen to purchase a more expensive but fully refundable ticket from Northwest, she instead purchased a heavily-discounted, nonrefundable ticket. By choosing to purchase a heavily-discounted ticket, Petitioner accepted the *quid pro quo* that she use the ticket as issued or pay a $75.00 reissuance fee to change her itinerary. When Petitioner later changed her travel plans and asked Northwest to reissue her tickets for a different flight, Northwest followed the terms of the contract and charged her the $75.00 reissue fee. Petitioner paid this fee, Northwest changed and reissued her tickets, and the contract between Petitioner and Northwest was fully performed.

On January 7, 1999, Petitioner brought her complaint against Northwest in the Dakota County District Court, First Judicial District, Minnesota. In her complaint, Petitioner alleged that by charging her $75.00 to reissue her tickets, Northwest had violated Minnesota's "contract law" and had been unjustly enriched in violation of Minnesota law. Petitioner did not allege, however, that Northwest failed to adhere to the terms of the contract, or

that Northwest took any action not specifically allowed by the contract. Instead, Petitioner's claims were based solely on her contention that the terms of the contract were unconscionable and that Northwest's $75.00 fee for reissuing her ticket represented a liquidated damages penalty that is prohibited under Minnesota law. Purportedly bringing her suit on a nationwide class basis, Petitioner sought damages, costs, attorneys' fees, declaratory relief, and an injunction prohibiting Northwest from adhering to its contracts throughout the United States with regard to charging customers a $75.00 ticket reissue fee.[2]

**B. Procedural Background**

Following service of the complaint, Northwest moved to dismiss pursuant to Minnesota Rule of Civil Procedure 12.02 for the complaint's failure to state a claim upon which relief could be granted because Petitioner's claims were preempted by the ADA. On April 7, 1999, the Honorable Rex D. Stacey, Dakota County District Court, Minnesota, dismissed Petitioner's complaint

---

[2] The United States Department of Transportation has promulgated and enforces a federal regulation that explicitly relates to ticket reissuance fees. *See* 14 C.F.R. § 253.7 ("A passenger shall not be bound by any terms *restricting refunds of the ticket price, imposing monetary penalties on passengers,* or permitting the carrier to raise the price, *unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.*" (emphasis added)). Petitioner has never attempted to invoke this regulation, and she has never argued that Northwest failed to meet all obligations imposed by federal law.

with prejudice. *See* Amended Findings and Order and Judgment (Apr. 7, 1999) at 2; Pet. App. at 18. Judge Stacey reasoned that the price Northwest charges for the service of reissuing a ticket relates to both the airline's prices and services. *Id.* at 4-5; Pet. App. at 20-21. Judge Stacey cited this Court's decision in *Wolens*, and noted that Petitioner had "not brought her suit to enforce the terms of her contract with the Defendant. Rather, she wishes to use Minnesota substantive law to avoid the contract as unconscionable, in order to rewrite the bargained-for agreement." *Id.* at 6; Pet. App. at 22. Judge Stacey concluded that "because Plaintiff's complaint attempts to regulate the Defendant's rates and services under Minnesota law, it is preempted by the ADA." *Id.* at 7; Pet. App. at 23.

Petitioner then appealed to the Minnesota Court of Appeals. On February 8, 2000, a unanimous panel of the Minnesota Court of Appeals affirmed Judge Stacey's dismissal of Petitioner's complaint on the ground of ADA preemption. *See Leonard*, 605 N.W.2d at 427; Pet. App. at 3. The Minnesota Court of Appeals agreed with Judge Stacey that the price Northwest charges to change and reissue discounted tickets relates to "price" for purposes of ADA preemption. *See id.* at 430; Pet. App. at 9-10. Relying on this Court's distinction in *Wolens* "between contract claims that seek simply to enforce the bargain of the parties and those that require the enforcement of state law or policy outside the contract," *id.* at 431; Pet. App. at 11 (citing *Wolens*, 513 U.S. at 233), the Minnesota Court of Appeals concluded that Petitioner's claims were preempted. Construing Minnesota law, the court determined that:

> Leonard's claims rest on a Minnesota common-law contract rule against penalties. The rule against contract penalties is an equitable doctrine arising from a public policy against compulsion and has at its foundation the unconscionability doctrine. The parties' bargain is irrelevant to the rule and often is frustrated by its application. Leonard's claims would require the district court to take into account public policy considerations outside Leonard's agreement with Northwest.

*Id.*; Pet. App. at 12 (citations omitted). Thus, the Minnesota Court of Appeals concluded that "[b]ecause [Leonard's] claims are unrelated to the contract of carriage with Northwest, but instead seek to enforce state-imposed obligations against contract penalties, they are preempted." *Id.*; Pet. App. at 12-13.

Petitioner sought discretionary review of the Minnesota Court of Appeals' decision in the Minnesota Supreme Court. The Minnesota Supreme Court summarily denied the petition for review on April 18, 2000. Pet. App. at 1.

## REASONS FOR DENYING THE PETITION

### I. THE MINNESOTA COURT OF APPEALS CORRECTLY FOLLOWED THIS COURT'S DECISION IN *WOLENS*

In 1978, believing that "maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety and quality of air transportation services," *Morales v. Trans World Airlines,*

*Inc.*, 504 U.S. 374, 378 (1992) (quotations and ellipses omitted), Congress enacted the ADA to deregulate the industry. *See id.* The ADA contains an express preemption clause which provides that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier. . . . " 49 U.S.C. § 41713(b)(1).[3] The ADA's preemption clause was enacted "[t]o ensure that the States would not undo federal deregulation with regulation of their own. . . . " *Morales*, 504 U.S. at 378.

In *Wolens*, this Court's most recent interpretation of the ADA's preemption clause, the plaintiffs claimed that retroactive changes to American Airlines' frequent flier program violated the Illinois Consumer Fraud Act and constituted a breach of contract. This Court concluded that the fraud claims were preempted because "the [Illinois] Consumer Fraud Act serves as a means to guide and police the marketing practices of the airlines; the Act does not simply give effect to bargains offered by the airlines and accepted by airline customers." *Wolens*, 513 U.S. at 228. The breach of contract claims, however, were not preempted because "routine breach-of-contract claims," *id.* at 232, did not involve state regulation of an airline, but instead were merely attempts to hold the airline to the terms of the bargains to which it had agreed. This Court emphasized the distinction between the imposition

---

[3] The ADA's preemption clause was previously codified at 49 U.S.C. App. § 1305(a)(1). Although § 1305(a)(1) referred to "rates, routes, or services" rather than "price, route or service," Congress declared that no substantive change was intended by the recodification. *See* H.R.Rep.No. 180, 103d Cong., 2d Sess. 1 (1993), *reprinted in* 1994 U.S.C.C.A.N. 818.

of state law and the enforcement of an airline's own bargain, explaining:

> The ADA's preemption clause, § 1305(a)(1), read together with the FAA's saving clause, stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated. ***This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement.***

*Id.* at 232-33 (emphasis added).[4]

Petitioner blatantly refuses to acknowledge this Court's explicit distinction between enforcing the terms of the parties' own agreement and imposing terms under state law that are contrary to that agreement. Thus, merely ignoring the clear language of the Court's rule quoted above, Petitioner simply misrepresents to this Court that the distinction "between a claim to *enforce* a contract, and a claim or defense challenging an illegal

---

[4] The Federal Aviation Act's saving clause referenced by the *Wolens* Court provides that " 'nothing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.' " *Morales*, 504 U.S. at 378 (quoting 49 U.S.C. App. § 1506). In interpreting this saving clause, this Court held that this "general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision" contained in § 1305(a)(1) of the ADA. *Id.* at 385.

contract penalty" is "a hypertechnical distinction, found nowhere in *Wolens*[.]" Pet. at 9 (emphasis in original). Indeed, it has been her strategy throughout each stage of this litigation simply to disregard this Court's rule in *Wolens*, and to insist – directly contrary to the language of *Wolens* quoted above – that any claim that can be styled as being based on "contract law" should escape preemption, because contract law is "uniform."[5] The issue, however, is not whether Minnesota's regulation of Northwest's prices will or will not be the same as Hawaii's regulation, but whether any state's law is being used at all in an attempt to affect prices.

Here, Petitioner's claims are an attempt to regulate Northwest's prices through the application of Minnesota law. Petitioner did not bring her unjust enrichment and liquidated damages claims to enforce the terms of the contract she made with Northwest, but rather to avoid those terms. Indeed, the Minnesota Court of Appeals, interpreting Minnesota common law, concluded that "[t]he parties' bargain is irrelevant to the rule [against

---

[5] In fact, there is no "uniform law" of liquidated damages. *Compare Dean Van Horn Consulting Assoc., Inc. v. Wold*, 395 N.W.2d 405, 407 (Minn. Ct. App. 1986) (under Minnesota law, "a liquidated damages clause is prima facie valid"), *with Pacheco v. Scoblionko*, 532 A.2d 1036, 1039 (Me. 1987) ("party seeking enforcement of a liquidated damages clause in a contract has the burden of proving its validity"); *see also id.* at 1038-39 & nn.4, 5 (noting decisional split and citing cases on each side). Nor is Minnesota's law of liquidated damages the same as California's law, where liquidated damages are controlled by statute, and different statutory provisions apply to different contractual subject matters. *See Ridgley v. Topa Thrift & Loan Ass'n*, 953 P.2d 484, 487 (Cal. 1998).

penalties] and often is frustrated by its applications." *Leonard*, 605 N.W.2d at 431; Pet. App. at 12. Petitioner's contract with Northwest specifically required her to pay Northwest $75.00 to have her discounted, nonrefundable ticket changed and reissued. Instead of alleging any violation by Northwest of the *contract*, Petitioner based her claims "against Northwest for violation of *contract law*. . . . " Complaint ¶ 10 (emphasis added). Under Petitioner's theory, Northwest should change its contractual price for its service of reissuing tickets – not just for her, but for all of its customers throughout the United States – because that price term conflicts with her view of Minnesota's public policy. These claims are precisely those preempted by the ADA, as this Court specifically recognized in *Wolens*.[6]

The Minnesota Court of Appeals made exactly the same distinction this Court made between the permissible enforcement of the terms of a contract and the impermissible imposition of state public policy contrary to the terms of that contract. There is no conflict between the *Wolens* holding and the Minnesota Court of Appeals' decision, let alone any that would merit certiorari review.

---

[6] Indeed, the precise grounds for Petitioner's claims – the doctrine of unconscionability – was used as an example by the United States, as an amicus curiae in *Wolens*, of a contract law that would be preempted under the ADA. *See* Br. for United States as Amicus Curiae at 28 ("Some state-law principles of contract law (*such as the doctrine of unconscionability*) might well be preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties." (emphasis added)). This Court was express in its adoption of the United States' position on preemption in the *Wolens* case. *Wolens*, 513 U.S. at 233.

## II. THERE IS NO CONFLICT OR CONFUSION HERE; EVERY LOWER COURT CONSIDERING THE IDENTICAL ISSUE HAS CONSISTENTLY APPLIED *WOLENS* TO PREEMPT SUCH CLAIMS

Courts in Texas, Washington, and New Jersey have also held that claims virtually identical to those raised by Petitioner are preempted by the ADA. Petitioner has failed to cite to any of these cases. In *Boon Ins. Agency, Inc. v. American Airlines, Inc.*, 17 S.W.3d 52 (Tex. Ct. App. 2000), the unsuccessful plaintiff – represented by the same law firm as Petitioner here – brought suit against American Airlines, alleging that a ticket reissue fee constituted an unlawful penalty under Texas law. Relying on *Wolens*, the Texas Court of Appeals held that the suit was preempted by the ADA. *See id.* at 58-59 ("If we were to adjudicate Boon's claim, we would be applying state policy and law to determine the propriety of the reissue fee. Such application of state law is preempted by the Act.").

In *Howell v. Alaska Airlines, Inc.*, 994 P.2d 901 (Wash. Ct. App. 2000), plaintiff sued Alaska Airlines, alleging that its policy of not refunding nonrefundable tickets was unconscionable and constituted unjust enrichment. The Washington Court of Appeals held that the claims were preempted by the ADA. *See id.* at 905 ("the appellants are attempting to enlarge or enhance their agreements with Alaska based on the laws or policies of this state that are external to the agreements. Under the ADA, particularly as construed by the Supreme Court in *Wolens*, the appellants' claims are preempted").

In *Blackner v. Continental Airlines, Inc.*, 709 A.2d 258 (N.J.Super.A.D. 1998), *cert. denied*, 525 U.S. 1142 (1999), plaintiff alleged that a $60.00 surcharge to replace a lost ticket constituted unjust enrichment and was a penalty prohibited by New Jersey law. *See id.* at 259. The *Blackner* court dismissed her claims, holding that, under *Wolens*, they were preempted by the ADA. *See id.* at 260 ("What plaintiff seeks is not to enforce the contract but to overturn it through a declaration invalidating the $60.00 surcharge provision. And she seeks that relief because she claims that the surcharge provision constitutes a penalty and is thus barred by the law of this state. . . . Plaintiff's suit clearly falls on the prohibited side of the line drawn in *Wolens*.").

By contrast, Petitioner has failed to cite *any* authority to suggest that, contrary to *Wolens'* express language, states may regulate an airline's prices through operation of some provision of "contract law" despite a contrary agreement in the contract. Whether or not there may be other aspects of ADA preemption on which the lower courts are divided, the uniformity of authority on this point demonstrates that there is no confusion as to the meaning of *Wolens* or the scope of the ADA's preemption clause as it pertains to the only preemption issue presented here. Under the plain language of the ADA and this Court's holding in *Wolens*, Petitioner's claims are clearly preempted.

## CONCLUSION

The petition for a writ of certiorari should be denied.

August 16, 2000

Respectfully submitted,

THOMAS TINKHAM
*Counsel of Record*
MICHAEL J. WAHOSKE
ANDRE T.M. HANSON
DORSEY & WHITNEY LLP
Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

*Attorneys for Respondent*